

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)	
)	
NATIONAL SCIENCE AND TECHNOLOGY)	FCC File No. 0000544347
NETWORK)	
)	
For a 470 MHz Trunked Industrial/Business)	
Station License at Rancho Palos Verdes,)	
California)	

ORDER ON RECONSIDERATION

Adopted: November 29, 2004

Released: November 29, 2004

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. On November 15, 2002, National Science and Technology Network, Inc. (NSTN or Applicant) filed a request for reconsideration (Petition) of the grant, in part, of its application to operate a new ten channel Industrial/Business (I/B) trunked station at Rancho Palos Verdes, California.¹ Applicant requests that the partial grant of its application be reconsidered, that its entire application be reinstated, and that it be granted in whole.² For the reasons set forth below, we deny the Petition.

2. On July 30, 2001, NSTN filed a license application to operate on certain private land mobile radio channel pairs available for I/B use in the 470 MHz frequency band as a for-profit private carrier providing trunked repeater service for its customers.³ On January 17, 2002, the Licensing and Technical Analysis Branch (LTAB) of the former Public Safety and Private Wireless Division in the Wireless Telecommunications Bureau (Bureau)⁴ returned the subject application because Applicant had not satisfied the criteria for grant.⁵ Specifically, NSTN was informed that it would need to (1) show that the requested station complies with the technical requirements for adjacent channel interference protection, (2) show why a temporary base station is needed, and (3) justify the number of mobiles requested.⁶ By correspondence dated January 24, 2002,⁷ and correspondence dated February 25, 2002,⁸

¹ See NSTN Petition for Reconsideration (filed Nov. 15, 2002).

² Petition at 1. The Petition also states that, in accordance with Section 1.945(e) of the Commission's Rules, 47 C.F.R. § 1.945(e), the Applicant "rejects the partial grant as made". *Id.*

³ See NSTN's FCC Application File No. 0000544347, FCC Form 601, Schedule H, filed July 30, 2001, amended Jan. 28, 2002, Feb. 26, 2002, Mar. 7, 2002 and Mar. 14, 2002.

⁴ The Commission reorganized the Bureau, effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. See Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414 ¶ 2 (2003).

⁵ See Notice of Application Return, Ref. Number 1245264, effective Jan. 16, 2002, generated Jan. 17, 2002 (Return Notice).

⁶ *Id.* at 2.

⁷ Letter from Gary Ruark, AAA Frequency Coordination to Wireless Telecommunications Bureau, Federal Communications Commission (dated Jan. 24, 2002) (AAA Letter I).

⁸ Letter from Gary Ruark, AAA Frequency Coordination to Wireless Telecommunications Bureau, Federal Communications Commission (dated Feb. 25, 2002) (AAA Letter II).

AAA Frequency Coordination (AAA), the frequency coordinator in the instant case, satisfactorily responded to the first two inquiries.⁹ However, LTAB found that NSTN's response to the third question posed by the Return Notice justified the grant of only three of the ten requested channels. Therefore, on October 16, 2002, the subject application was granted under the call sign WPWC850 for three channels. Applicant then filed its request seeking reconsideration of LTAB's action.

3. In the Petition, NSTN indicates that it seeks authority to operate a new ten channel I/B trunked station at Rancho Palos Verdes, California, for operation at temporary locations in accordance with Section 90.137 of the Commission's Rules.¹⁰ According to Applicant, the location requested in the subject application, Rancho Palos Verdes, is situated within the area covered by Station WPPH728,¹¹ which is also licensed to NSTN for temporary operations.¹² When NSTN determined that it would be operating at the Rancho Palos Verdes location for more than one year, it filed an application for a separate authorization, as required by Section 90.137(b) of the Rules.¹³ Applicant requested to be licensed on ten channels pursuant to Section 90.187(e) of the Commission's Rules.¹⁴

4. NSTN asserts that Section 90.187(e) of the Rules does not contain any requirement that an applicant must demonstrate that it has sufficient loading for the channels requested when it submits its application.¹⁵ Nor, submits NSTN, does Section 90.313(c) of the Commission's Rules,¹⁶ which provides that a licensee be required to show that an assigned frequency pair is at full capacity before it may be assigned a second or additional pair, prevent the assignment of ten channels to Applicant.¹⁷ Otherwise, NSTN argues, no entity would ever be permitted to apply for a ten channel trunked system in the 470-512 MHz band because it would have to load the first channel and demonstrate that the channel was fully loaded before it would be entitled to request a second channel.¹⁸

5. We disagree with NSTN's arguments. Although the Commission's Rules permit an applicant for trunked systems operating on frequencies between 150 and 512 MHz (except on 220-222 MHz) to apply for up to ten channels in an application, it has been a long-standing Commission policy that an applicant for a license must justify the number of channels requested.¹⁹ We are not required to grant a license applicant ten channels just because the applicant has requested this many frequencies. If the number of channels is not justified by the need for them, it would be an inefficient use of the nation's scarce spectrum to grant an applicant that many frequencies.²⁰ Contrary to NSTN's contention, we are

⁹ AAA Letter I at 1-2; AAA Letter II at 1.

¹⁰ 47 C.F.R. § 90.137.

¹¹ Station WPPH728 is licensed for 5,000 mobile units.

¹² Petition at 2.

¹³ 47 C.F.R. § 90.137(b).

¹⁴ 47 C.F.R. § 90.187(e).

¹⁵ Petition at 3.

¹⁶ 47 C.F.R. § 90.313(c).

¹⁷ Petition at 3.

¹⁸ *Id.*

¹⁹ See Viking Dispatch Services, Inc., *Memorandum Opinion and Order*, 14 FCC Rcd 188814, 18820 ¶ 10 (1999). See also Application of D/FW Communications Service, Inc., FCC File No. 9605D038152; Applications of Atlas Communications, Inc., FCC File No. 9601DO13981.

²⁰ NSTN cites Samuel Moses, *Order on Reconsideration*, 17 FCC Rcd 17137 (WTB PSPWD 2002) (*Moses*), in support of its contention that an application for a ten channel trunked license in the 470-512 MHz band may be granted without any loading justification. Petition at 3. The record in *Moses* does not indicate whether such a justification was requested or provided and, thus, that case cannot be used to rationalize grant of all ten frequencies requested by NSTN.

not requiring that Applicant demonstrate that each channel is fully loaded before another channel may be assigned to it. However, the Commission does require justification specific as to the need for multiple frequencies to assure that an applicant is not licensed for more channels than it actually needs.

6. In this instance, NSTN requested 181 mobile units to operate on each frequency. Therefore, LTAB's grant of three channels to NSTN was more than adequate. NSTN argues that LTAB misinterpreted the number of mobile units requested in the subject application.²¹ According to Applicant, it requested not 181 mobile units to operate on each frequency, but rather a total of 1810 mobile units.²² NSTN is incorrect. Furthermore, we find no merit in Applicant's excuse that it altered its mobile unit count in the instant case in response to another licensee's criticism about the number of mobiles requested on its applications in other license proceedings.²³ If there was any confusion on NSTN's part, the appropriate authority to contact for application inquiries was the Commission's licensing staff, not another license applicant.²⁴ Further, Applicant's inability to provide the Commission with copies of purchase orders for mobile units because it does not purchase the mobile units for users of its system is an inadequate explanation for the failure to provide support for grant of the maximum number of channels permitted under the Commission's Rules.²⁵ Justification must be furnished by this or another mechanism to assure spectrum efficiency. In view of the above, we affirm LTAB's decision and deny the reconsideration request.

7. IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 90.187(e) of the Commission's Rules, 47 C.F.R. §§ 1.106, 90.187(e), the Petition for Reconsideration filed by National Science and Technology Network, Inc., on November 15, 2002, IS DENIED, as indicated herein.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

²¹ Petition at 4.

²² *Id.*

²³ *Id.*

²⁴ Also, NSTN's argument that loading on the subject application need not be demonstrated because the Applicant already has the channels loaded under the WPPH728 license has no merit. *Id.* at 4 n.6. NSTN still must justify the specific need for each frequency requested in the instant application.

²⁵ AAA Letter I at 2.